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Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 95-63

In the Matter of

Amendment of Section 73.202(b), RM-8617
Table of Allotments.
FM Broadcast Stations.
(Rushville, Illinois)

NOTICE OF PROPOSED RULE MAKING

Adopted: May 8, 1995;

Released: May 15, 1995

By the Chief, Allocations Branch:

Comment Date: July 6, 1995

Reply Comment Date: July 21, 1995

1. The Commission has before it the petition for rule making filed by Larry K. and Cathy M. Price ("petitioners"), licensee of Station WKXQ(FM), Channel 244A, Rushville, Illinois, proposing the substitution of Channel 223A for Channel 244A at Rushville, and the modification of their license to specify operation on Channel 223A. Petitioner states its intention to apply for the channel, if allotted.¹

2. In support of their proposal, petitioners state that the channel substitution will reduce co-channel interference and terrain shielding. Petitioner notes that Station WKXQ(FM) is short-spaced by 7.7 kilometers to Station WCVS(FM), Channel 244A, Virden, Illinois. This situation is due to the revision of the spacing table created in MM Docket No. 88-375, which increased the minimum co-channel Class A spacing from 105 to 115 kilometers. See *Second Report and Order*, MM Docket No. 88-375, *Amendment of Part 73 of the Rules to provide for an additional FM station class (Class C3) and to increase the maximum transmitting power for Class A FM stations*, 4 FCC Rcd 6375 (1989). Although, Stations WKXQ(FM) and WCVS(FM) have entered into an agreement in which each station has agreed to allow the other to increase power to 6 kilowatts, pursuant to the provisions of 47 CFR, Sec. 73.213(c)(2). This proposal would eliminate the co-channel interference, and the short-spacing between the stations. In addition, it will also reduce terrain shielding to Station WKXQ(FM).

¹ Although the petitioner's request was signed, it failed to include an affidavit verifying that the statements contained in the petition were accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the party and his/her address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice

3. We believe the public interest would be served by proposing the substitution of Channel 223A for Channel 244A at Rushville, Illinois, since it would enable Station WKXQ(FM) to provide improved FM service to that community. An engineering analysis has determined that Channel 223A can be allotted to Rushville, Illinois, in compliance with the Commission's minimum distance separation requirements at petitioner's licensed site with a site restriction of 8.3 kilometers (5.1 miles) northwest² of the community.

4. As requested, we also propose to modify petitioner's license for Station WKXQ(FM) to specify operation on Channel 223A. We will not accept competing expressions of interest for the use of Channel 223A at Rushville because the procedures outlined in *Modification of FM and TV Licenses*, 98 FCC 2d 916 (1984) and Section 1.420(g) of the Commission's Rules do not apply in this case since no upgrade in facilities is contemplated.

5. Accordingly, we will seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to the following community:

		Channel No.
City	Present	Proposed
Rushville, Illinois	244A	223A

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before July 6, 1995, and reply comments on or before July 21, 1995, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Larry K. and Cathy M. Price
WKXQ Radio
P.O. Box 196
123 North Liberty Street
Rushville, Illinois 62681
(Petitioners)

that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. See also *Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to rectify this omission in its comments.

² The coordinates for Channel 223A at Rushville are North Latitude 40-08-20 and West Longitude 90-39-26.

ever, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an *ex parte* presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an *ex parte* presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

APPENDIX

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached.

2. *Showings Required.* Comments are invited on the proposal(s) discussed in the *Notice of Proposed Rule Making* to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. *Cut-off Procedures.* The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this *Notice*, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. *Comments and Reply Comments: Service.* Pursuant to applicable procedures set out in Sections 1.420(a), (b) and (c) of the Commission's Rules and Regulations, parties may file comments and reply comments by the dates set forth in the *Notice of Proposed Rule Making* to which this Appendix is attached. All submissions must be made to this proceeding or by persons acting on behalf of parties must be made in written comments, pleadings, or other appropriate pleadings. Comments must be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by proof of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, 1919 M Street, N.W., Washington, D.C. 20554.

5. *Number of Copies.* In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, pleadings, briefs, or other documents must be furnished the Commission.

6. *Public Inspection of Filings.* All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Public Reference Room at its headquarters, 1919 M Street, N.W., Washington, D.C.